

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ADAN JOE NIETO,

Petitioner,

v.

JEFFREY UTTECHT,

Respondent.

Case No. C09-5250RBL

ORDER

THIS MATTER comes on before the above-entitled Court upon Petitioner's Motion for an "Enlargement" of Time to file objections to the Magistrate Judge's Report and Recommendation [Dkt. #24]. Having considered the entirety of the records and file herein, the Court finds and rules as follows:

Petitioner filed a Petition for a Writ of Habeas Corpus on April 28, 2009 and an Application for Leave to Proceed *In Forma Pauperis* on May 1, 2009. Because petitioner paid the \$5.00 filing fee on May 11, 2009 the Application to Proceed *In Forma Pauperis* was denied. Thereafter, an Order directing service and requiring respondent to file an Answer to the Petition was filed on June 16, 2009. The Order provided that respondent file an Answer within 45 days of the Order and further directed that petitioner may file a Response to the Answer in accord with the Court's Local Rules. [Dkt. #12]. Petitioner did not file a Response to the Answer and on October 6, 2009, Magistrate Judge Karen L. Strombom filed a Report and Recommendation recommending dismissal of the Petition as untimely. In the Report and Recommendation, the Petitioner was advised that he had ten (10) days to file any objections. The Report

1 and Recommendation was duly noted for October 23, 2009. Petitioner did not file any objections to the
2 Report and Recommendation and on October 23, 2009, this Court entered an Order Adopting the Report
3 and Recommendation. Petitioner filed the instant motion on October 26, 2009.

4 Petitioner seeks an extension of time to file objections to the Report and Recommendation despite
5 the fact that he never filed any response to Respondent's Answer. The Court finds that Petitioner did not
6 diligently attempt to prosecute this matter when he had the opportunity to do so. Petitioner's Motion for
7 an "Enlargement" of Time [Dkt. #24] is **DENIED**.

8 Furthermore, the Court declines to issue a certificate of appealability of the denial of Petitioner's
9 28 U.S.C. §2254 action because he has failed to make "a substantial showing of the denial of a
10 constitutional right." 28 U.S.C. §2253(c)(2).

11 **IT IS SO ORDERED.**

12 The Clerk shall send uncertified copies of this order to all counsel of record, and to any party
13 appearing pro se.

14 Dated this 13th day of November, 2009.

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17 RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE